



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 9 2011

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Marianne Engelman Lado
Earthjustice
156 William Street
Suite 800
New York, NY 10038

Dear Marianne Engelman Lado,

Thank you for your October 13, 2010, petition to Environmental Protection Agency (EPA) Administrator Lisa Jackson. It has been referred to me for reply. In your petition, you indicate that EPA failed to "publish a schedule identifying the waters in which the dispersants and other chemicals may be used and the quantities of such dispersants and other chemicals that can be used safely." You also request that EPA establish toxicity criteria, conduct additional and expanded toxicity testing, and require full public disclosure of a product's ingredients as a condition for listing a product on the National Contingency Plan Product Schedule (the Schedule).

The Schedule lists dispersants and other chemical and biological agents that may be authorized for use on oil spills in the U.S. (40 CFR 300.900). Subpart J and its predecessors have regulated the use of dispersants since the 1970s. In the 1990s the Agency determined that it was appropriate for Regional Response Teams (RRTs) to decide the site-specific waters where, and appropriate quantities of, chemical countermeasures to be 'pre-authorized' for use as part of their emergency planning process, primarily because the RRTs are more intimately familiar with the unique features of the waters where oil spills might occur. The Subpart J regulations were revised to reflect that determination.

EPA was in the process of revising the regulatory requirements for oil spill response chemical agent manufacturers, testing laboratories, and emergency responders subject to the Product Schedule section of the NCP regulations just prior to the BP Spill. This effort was put on hold to review the lessons learned from the BP Spill involving the use of dispersants on the surface and subsea to ensure the issues are well understood.

In light of the BP Spill experience and in line with nearly all the suggestions in your petition, we have initiated work to overhaul the Subpart J requirements and to request comment on proposals for new or enhanced dispersant and other chemical agent product acute and chronic toxicity tests, product efficacy tests, and how the efficacy and toxicity test data can be used as criteria for listing a product on the Schedule. We also plan to seek comment and input on making more information about the chemical agents

available to the public and the parameters governing the appropriate use and monitoring of chemical agents on oil spills as part of "pre-authorized" decisions by RRTs and Area Planners to ensure the health and environmental circumstances associated with chemical countermeasures are properly addressed. Some of this work has already been initiated; EPA and the US Coast Guard, in collaboration with the National Response Team (NRT) agencies and EPA Regional Offices are examining Area and Regional Contingency Plans and working toward interim guidance for the use of dispersants while the Subpart J requirements are amended.

During the Subpart J proposed and final regulatory development process, EPA plans to engage stakeholders through meetings and via public comment. We welcome dialog with you as this process unfolds.

Thank you again for your input. If you have any questions please contact Craig Matthiessen of my Office at 202-564-8016.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Tulis', with a stylized flourish extending to the right.

Dana S. Tulis, Acting Director
Office of Emergency Management